



DECISION

Fair Work Act 2009
s.185—Enterprise agreement

Southern Ports Authority T/A Southern Ports
(AG2024/5263)

SOUTHERN PORTS BUNBURY PILOT BOAT ENTERPRISE AGREEMENT 2023

Port authorities

COMMISSIONER SCHNEIDER

PERTH, 23 JANUARY 2025

Application for approval of the Southern Ports Bunbury Pilot Boat Enterprise Agreement 2023

[1] Southern Ports Authority T/A Southern Ports (the Applicant) has made an application for the approval of an enterprise agreement known as the *Southern Ports Bunbury Pilot Boat Enterprise Agreement 2023* (the Agreement).

[2] The application was made under section 185 of the *Fair Work Act 2009* (Cth) (the Act).

[3] The Agreement is a single enterprise agreement.

[4] On the basis of the material contained in the application and accompanying declarations, I am satisfied that each of the requirements of sections 186, 187 and 188 of the Act as are relevant to this application for approval have been met.

[5] Pursuant to section 205A(2) of the Act, the workplace delegates' rights term prescribed by the *Port Authorities Award 2020* is taken to be a term of the Agreement.

[6] The Maritime Union of Australia Division of the Construction, Forestry and Maritime Employees Union (the Union), being a bargaining representative for the Agreement, has given notice under section 183 of the Act that it wants the Agreement to cover it.

[7] In accordance with section 201(2) of the Act, and based on the declaration provided by the organisation, I note that the Union is covered by the Agreement.

[8] The Agreement is approved and, in accordance with section 54 of the Act, will operate from 30 January 2025.

[9] The nominal expiry date of the Agreement is 30 June 2027.



COMMISSIONER

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SOUTHERN PORTS
ALBANY BUNBURY ESPERANCE

Southern Ports Bunbury Pilot Boat Enterprise Agreement 2023

Note – in accordance with s.205A of the *Fair Work Act 2009* (Cth) the most favourable term of the delegates' rights terms in the relevant modern awards, as determined by the Fair Work Commission, is taken to be a term of the agreement.

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PART 1 – AGREEMENT OPERATION

1. TITLE AND COMMENCEMENT

- 1.1 This Agreement shall be known as the Southern Ports Bunbury Pilot Boat Enterprise Agreement 2023.
- 1.2 This Agreement shall commence seven (7) days after the date of certification by the Fair Work Commission.
- 1.3 The Agreement shall operate until 30 June 2027 unless it is terminated or replaced by another agreement.
- 1.4 Re-negotiation of the terms and conditions of this Agreement shall commence at least three (6) months prior to expiry.

2. DEFINITIONS

- 2.1 For the purposes of this Agreement, unless the contrary intention appears:

- a) **‘Act’** means:
 - (i) means the Fair Work Act 2009 (as amended)
- b) **‘Agreement’** means:
 - (i) the Southern Ports Bunbury Pilot Boat Enterprise Agreement 2023
- c) **‘Casual Employee’** means:
 - (i) an Employee engaged on a casual basis by the Employer in accordance with this Agreement and with the definition of a casual employee under the Fair Work Act 2009.
- d) **‘Day’** means:
 - (i) 24 hours from the time of engagement
- e) **‘Day Rate’** means:
 - (i) a Full-time Employees Annual Salary as prescribed in the Salary Table at Clause 14.5 of this Agreement, divided by 182
- f) **‘Emergency’** means:
 - (i) an unexpected situation requiring immediate action and provides imminent risk to health and safety
- g) **‘Employee’** means:
 - (i) any person bound by this Agreement and employed by Southern Ports – Bunbury
- h) **‘Employer’** means Southern Ports – Bunbury.
- i) **‘Even Time Roster’** means:

- (i) an even working roster arrangement where the time working on duty is equal to the time not working, off duty. The roster shall be seven (7) Days On and seven (7) Days Off, or one Rostered Week On and One Rostered Week Off
- j) **‘Fixed Term Employee’** means:
 - (i) an Employee engaged by the Employer for a fixed period of time, whose contract of employment and employment will automatically terminate at the end of that fixed term. Employees employed on a fixed term contract will, except where otherwise provided, be subject to the provisions of this Agreement
- k) **‘FWC’** means:
 - (i) the Fair Work Commission
- l) **Government Wages Policy (GWP)** means the public sector wages policy issued by the WA State Government from time to time.
- m) **‘Immediate family’** means:
 - (i) as per the Act; an Employee’s spouse, child, parent, grandparent, grandchild or sibling; or a child, parent, grandparent, grandchild, or sibling of an Employee’s spouse.
“Spouse” includes former spouse, de facto and former de facto spouse
- n) **‘Lieu time’** means:
 - (i) time off from work utilising hours worked in lieu of pay
- o) **‘Medical certificate’** means:
 - (i) documentary proof of illness or injury from a registered medical practitioner stating that the Employee will be/was unfit for work
- p) **‘Member of Household’** means:
 - (i) a person who, at or immediately before the relevant time, lived with the Employee
- q) **‘MUA’** means:
 - (i) the Maritime Union of Australia Division of the CFMEU
- r) **‘NES’** means:
 - (i) the National Employment Standards as contained in sections 59 to 131 of the Act
- s) **‘Full-Time Employee’** means:
 - (i) a Full-Time Employee engaged and paid an annual salary in accordance with Clause 14.5 of this Agreement
- t) **‘Part-Time Employee’** means:
 - (i) an Employee engaged to work a minimum 50% (91 days) of Full-Time employment and is paid a minimum guaranteed amount in accordance with Clause 11.4 of this Agreement
- u) **‘Port’** means:
 - (i) the meaning ascribed to that term in the *Port Authorities Act 1999*, specifically being Southern Ports in Bunbury, Western Australia

- v) **Shift worker** means:
 - (i) an Employee who is a seven (7) Day shift worker who is regularly rostered to work on Sundays and Public Holiday and for the purposes of s.87(1)(b) of the Act, is described in this agreement as a Deckhand, Cutter Master, or Senior Cutter Master
- w) **'Target maintenance hours'** means:
 - (i) the minimum hours devoted to vessel and equipment/facilities maintenance over the course of each Duty Crew's Rostered Week On. The minimum hours of maintenance performed per crew member will be 2.5 hours/Day, five (5) Days a week for a total of 25 hours week. Maintenance hours can be worked at any time during the course of the Duty Crew's Rostered Week On to accommodate the planned maintenance program, shipping and fatigue management.
- x) **Union** means the Maritime Union of Australia division of the CFMEU.
- y) **'Week'** means:
 - (i) seven (7) Days.

3. NATIONAL EMPLOYMENT STANDARDS AND THIS AGREEMENT

- 3.1 This Agreement will be read and interpreted in conjunction with the National Employment Standards (NES), to the extent that where there is an inconsistency between this Agreement and the NES, and the NES provides a greater benefit, the NES provision will apply to the extent of the inconsistency.

4. COVERAGE

- 4.1 This Agreement shall cover all work undertaken by Employees engaged by Southern Ports to undertake pilot boat operations at its Bunbury facilities.
- 4.2 This Agreement applies to:
 - a) Southern Ports Authority (ABN 30 043 412 50); and
 - b) The Employees of the Employer engaged in the classifications referred to in Clause 13 of this Agreement.
- 4.3 This Agreement shall stand alone and (to the extent permitted by law) no other modern award, enterprise agreement, other industrial instrument, orders and memoranda, work practices or arrangements, written or unwritten, shall have effect in relation to the Employees while this Agreement is in operation and do not form part of it.
- 4.4 This Agreement covers all matters contained in this Agreement concerning the employment of the Employees.

5. INDIVIDUAL FLEXIBILITY

- 5.1 Notwithstanding any other provisions of this Agreement, an Employee and the Employer may agree to vary the effect of this Agreement to meet the genuine individual needs of the Employee and the Employer.
- 5.2 The terms that an Employee, and the Employer, may agree to vary the effect are:
 - a) hours of work;
 - b) overtime rates;

- c) penalty rates and shift loadings;
 - d) allowances; and
 - e) leave loading.
- 5.3 Any arrangement for individual flexibility under this clause must be genuinely agreed to by the Employee and the Employer. The arrangement must be in writing and signed by the Employer and the Employee (including the Employee's parent or guardian where the Employee is under 18 years of age). A copy of the Agreement must be given to the Employee within fourteen (14) days of it being agreed to.
- 5.4 The Employer must ensure that the terms of the individual flexibility arrangement:
 - a) are about permitted matters under section 172 of the Fair Work Act 2009;
 - b) are not unlawful terms under section 194 of the Fair Work Act 2009; and
 - c) result in the Employee being better off overall than the Employee would be if no arrangement was made.
- 5.5 The individual flexibility arrangement may be terminated;
 - a) by the Employee or the Employer giving twenty-eight (28) days' notice of termination, in writing, to the other party; or
 - b) at any time, by written agreement between the Employee and the Employer.
- 6. REQUESTS FOR FLEXIBLE WORKING ARRANGEMENTS**
- 6.1 Requests for flexible working arrangements are provided for in the NES.

PART 2 – EMPLOYMENT ARRANGEMENTS

7. TYPES OF EMPLOYMENT

- 7.1 Employees will be engaged on a permanent full-time, permanent part-time, Fixed Term/Specific Task or casual basis in accordance with the Employer's operational requirements.
- 7.2 A permanent Full-Time Employee is an Employee engaged to work an average of 38 ordinary hours per week in accordance with the operating roster in the port.
- 7.3 A Permanent Part-Time Employee is an Employee who is engaged to work fewer than 38 ordinary hours per week. Part-Time Employees will receive all benefits under this Agreement on a pro rata basis in accordance with hours worked.
- 7.4 Permanent Part-Time Employees will be guaranteed to work 91 days per annum.
- 7.5 A Casual Employee is an Employee paid by the hour in accordance with the terms in this Agreement. Casual Employees will be engaged by the Employer as required to Supplement Permanent Employees.
- 7.6 The type of Employee will not be altered except by mutual agreement of the Employer and the Employee, or by conversion for casual employees, as outlined in the NES.
- 7.7 The Employer does not guarantee a Casual Employee employment on a regular basis and any work offered will be subject to the operational requirements of the Employer.

8. GENERAL DUTIES & RESPONSIBILITIES

- 8.1 An Employee's duties and responsibilities may be varied by the Employer, provided that they are within their range of skills, qualifications, competence and training.
- 8.2 At all times in performing their duties and responsibilities, Employees are required to:
 - a) comply with any lawful direction given by the Company;
 - b) use their best endeavours;
 - c) devote the whole of their time and attention to their work;
 - d) not engage in any activities which seek to publicly harm the reputation, or criticise the actions, of the Company; and
 - e) ensure the highest level of safe working practices are adhered to and maintained.
- 8.3 The Employer may, from time-to-time issue, amend or withdraw policies or procedures. Any such policies or procedures issued by the Employer are not intended to be a contractual term of employment but rather are a set of instructions given by the Employer to the Employees.
- 8.4 The Employees must comply with the Employer's policies and procedures that are in force from time to time. Failure to adhere to the Employer's policies and procedures may result in disciplinary action being taken against an Employee including termination of employment.
- 8.5 In the event of any inconsistency between this Agreement and the Employer's policies and/or procedures, the provisions of this Agreement will apply to the extent of the inconsistency.

9. HOURS OF WORK

- 9.1 The pilot boat will be manned by a Cutter Master and a Deckhand (collectively the Duty Crew) to transfer Pilots from ship to shore or vice versa. The Duty Crew will be responsible for maintenance as required to keep the boats and equipment/facilities in good working order to meet the maintenance requirements of the Employer, ie: wash down, refuelling, oil changes and greasing.
- 9.2 The Employer will determine the actual method of working ordinary hours. Where the Employer wishes to alter the working hours, it may do so by agreement with the majority of Employees affected by the change following consultation as set out in Clause 33.
- 9.3 Hours of work shall be as follows:
- a) Port operations are based on seven (7) days per week 365 days per year to meet the service requirements.
 - b) The ordinary hours of work for an Employee will be an average of 38 hours over a work cycle and may be worked on any or all days Monday through Sunday.
 - c) The normal working hours are generally between 0800 to 1600, Monday to Sunday. Attendance will be managed to limit fatigue when shipping occurs outside normal working hours, providing that this is balanced with meeting the minimum maintenance requirements.
 - d) The pilot boat crew rostered on will work as directed subject to the Southern Ports Fatigue Management Procedure and sub-clauses 9.3(e), 9.3(f) and 9.3(i) below. In general, and subject to operational requirements and fatigue, an Employee rostered on duty will be required to attend to carry out planned maintenance between the nominal ordinary hours on each day of the duty week, Monday to Sunday, including public holidays.
 - e) The Agreement allows for 182 Days Rostered On and 182 Days Rostered Off in any one twelve (12) month period. The roster shall be seven (7) Days On and seven (7) Days Off.
 - f) A Full-Time Employee will be available for multiple starts within any (24 hour) Rostered Day On provided they are not required to be on continuous duty for more than 12 hours.
 - g) Continuous duty is defined as time worked from arrival on board the pilot boat until crew has departed the pilot boat.
 - h) A rest break of less than six (6) hours will not break the continuity of a period of duty.
 - i) Continuous duty exceeding 12 hours will be followed by a ten (10) hour uninterrupted break from duty.
- 9.4 Permanent Part-Time Employees are required to be fit for work and, where reasonably necessary, to be available to report for duty within 6 hours' notice. The six (6) hours notification will be the nominal callout time.
- 9.5 The Employer may require an Employee to work a different roster including the start and finish times by providing the Employees with 48 hours' notice.

Reasonable additional hours

- a) In addition to the ordinary hours of work, Employees may be required to work reasonable additional hours to meet the Employer's operational requirements.
- 9.6 All hours performed continuing past midnight count as part of the previous day's work.

Relief

- 9.7 To cover unplanned leave, planned leave and fatigue the below order of allocation must be implemented:
- a) Option 1 - Part-Time Employees (during first 91 days),
 - b) Option 2 - Casual Employees,
 - c) Option 3 - Full-time Employees (Rostered Week Off) and/or Part-Time Employees (over 91 days).
 - d) Full-Time Employees can swap Rostered Time to facilitate personal requirements. All Rostered Time alterations shall be recorded. Where a swap is agreed to between Full-Time Employees, there shall be no additional payments.

10. MEAL BREAKS

- 10.1 All Employees are entitled to a minimum paid meal break of 30 minutes and not more than 60 minutes during each day.
- 10.2 The timing of all approved meal breaks will be flexible to fit in with operational requirements, but the period between the start of work and a meal break is not to exceed five (5) hours.

11. PART-TIME EMPLOYEES (GUARANTEED DAYS)

General employment arrangements

- 11.1 The Employer will ensure that the Part-Time Employees will be paid a minimum guarantee for a minimum of 91 days per annum (50% of Full time – 50% of 182 days)
- 11.2 Part-Time Employees will be available to provide the flexibility required in the current roster
- 11.3 A Part-Time Employee will be allocated work in accordance with Port requirements.

Rates of Pay

- 11.4 Part-Time Employees will be paid a minimum annual guarantee of \$70,000 for 91 days per annum, averaged and paid over 26 fortnightly pay cycles.
- 11.5 In addition to the fortnightly guarantee at Clause 11.4, any additional days worked (more than 91 days per annum) will be paid at the relevant Day Rate as per Salary Table at Clause 14.5 of this Agreement.

Hours and allocation arrangements

- 11.6 Part-Time Employees will be engaged as needed on a turn-by-turn basis to distribute work as fairly and evenly as possible.
- 11.7 Subject to approved leave arrangements, Part- Time Employees shall be available for allocation to any shift in accordance with this Agreement.
- 11.8 A Part-Time Employee who fails to accept and/or work any reasonable engagement shall, unless otherwise agreed by the Employer, have the level of guaranteed hours reduced by the number of hours not worked as required.

12. CASUAL EMPLOYEES

- 12.1 Casual Employees will be entitled to a twenty-five (25) % casual loading which will apply to the relevant Hourly Rate listed in Table at Clause 14.5 of this Agreement. The casual loading constitutes part of a Casual Employee's all purpose-rate.
- 12.2 The casual loading as per clause 12.1 is paid instead of annual leave, paid personal/carer's leave, notice of termination, redundancy benefits and other entitlements of Full-Time or Part-Time employment.
- 12.3 A minimum engagement of four (4) hours will apply to Casual Employees.

PART 3 – REMUNERATION AND ENTITLEMENTS

13. CLASSIFICATIONS

- 13.1 Employees are to be engaged in any one of three (3) classifications, Deckhand, Cutter Master, or Senior Cutter Master.
- 13.2 Unless otherwise indicated, the general tasks undertaken by each Level within this Agreement are detailed in the position descriptions for each role. Any changes to these position descriptions will be managed through the Consultation and Change process in clause 32 of this Agreement.

14. RATES OF PAY

- 14.1 Employees will be paid the base remuneration according to their classification defined in Clause 13 (Classifications).
- 14.2 The Annual Salaries set out in the Salary Table at Clause 14.5, will be paid for all on-duty days at work and off-duty days whilst not at work as part of the Even Time Roster and will be paid in equal fortnightly instalments. The rate of pay will increase annually on 1 January in line with Government Wages Policy (GWP). For the term of the agreement, GWP will be applied as follows:
- a) 2025 – 4%
 - b) 2026 – 4%
 - c) 2027 – 4%.
- 14.3 In the event this Agreement expires, and a new replacement Agreement has not been put to formal vote approved by the Fair Work Commission, rates of pay will increase on 1 January 2028 in line with GWP or in the absence of GWP, Perth CPI for the September quarter preceding.
- 14.4 The Employees' salaries provided for in this Agreement:
- a) fully compensates the Employee for all Days worked under this Agreement; and
 - b) incorporates and is in substitution for, all other penalties, allowances, loadings, and entitlements the Employee would otherwise be entitled to (except where otherwise specified within this Agreement).

14.5 Pilot Boat Employee - Salary Table

Classification	On Commencement (annual)	Day Rate (annual / 182)	Hourly Rate**
Senior Cutter Master	\$140,000	\$769.23	\$70.85
Cutter Master	\$130,000	\$714.29	\$65.79
Deckhand	\$110,000	\$604.40	\$55.67

**The hourly rate is based on the annual salary, divided by 26 fortnights per year, divided by fortnightly hours of 76.

15. OVERTIME AND PENALTY RATES

- 15.1 Work performed by Full-Time Employees on their Rostered Days Off, will be paid as overtime at the relevant Day Rate in the Salary Table at Clause 14.5 of this Agreement.

16. APPRENTICE AND TRAINEE RATES OF PAY

- 16.1 Apprentices will be entitled to a percentage as set out in the table below, of the applicable rate of pay as set out in clause 14.5.

Year of apprenticeship	Percentage of <u>applicable rate</u> for apprentices who have not completed year 12	Percentage of <u>Applicable rate</u> for apprentices who have completed year 12
	%	%
1st year	50	55
2nd year	60	65
3rd year	75	75
4th year	88	88

17. HIGHER DUTIES

- 17.1 The parties to this Agreement commit to co-operate to ensure the best utilisation of workforce skills on the basis that;
- a) Employees will carry out all direction and duties that are within the scope of their skills, training and abilities, while ensuring that safety and quality requirements of the work performed are maintained.
 - b) The skills of an Employee may, as required, be applied outside of their particular classification.
- 17.2 An Employee performing the tasks, role and responsibilities of an Employee at a higher classification on a temporary basis for one day or more, must be paid the higher Day Rate as per Pay Table at Clause 14.5 for each day they perform those duties.

18. PAYMENT OF SALARY

- 18.1 Unless otherwise agreed, salary shall be paid fortnightly by direct transfer to an account in a bank or other financial institution nominated by the Employee and acceptable to the Employer.
- 18.2 Salary may be paid in such other manner as is agreed between the Employer and the Employee.
- 18.3 On pay day, the Employee shall be given written advice showing the gross amount of salary of allowances due and deductions.
- 18.4 In the event of an underpayment of salary, an Employee's pay shall be adjusted as soon as practicable but, in any event, no later than the subsequent pay period.
- 18.5 The Employer may make deductions from the Employee's salary following notification and discussion with the Employee provided the deduction is reasonable. Recovery of an overpayment may occur after notification and discussion with the Employee provided that the deduction is reasonable.

19. ALLOWANCES

First Aid Allowance

- 19.1 An Employee who has been trained to render first aid, is the current holder of an appropriate current first aid qualification (such as a certificate from St. John Ambulance or similar body) and is appointed by the Employer as a First Aid Officer, the Employee will be paid an allowance of \$18.58 per week worked.

20. SUPERANNUATION

- 20.1 The Employer will contribute into a complying Superannuation Fund the amount that is required by Superannuation Guarantee legislation.
- 20.2 The Employer will contribute for Casual Employees the amount that is required by Superannuation Guarantee legislation for all hours worked.
- 20.3 Dependant on the rules of the fund, an Employee may elect to make personal superannuation contributions from pre-taxed earnings.
- 20.4 Where an Employee does not nominate a fund, or the Employer is unable to pay into that fund, contributions will be paid into a super fund nominated by the Employer.

PART 5 – LEAVE ENTITLEMENTS

21. ANNUAL LEAVE

- 21.1 Employees (other than Casual Employees) are entitled to annual leave in accordance with the NES.
- 21.2 Part-Time Employees accrue a pro-rata period of annual leave per year.
- 21.3 Annual leave accrues progressively based on an Employee's ordinary hours of work.
- 21.4 Employees are entitled to the following amounts:
- a) In respect to Employees engaged as Full-Time Pilot Boat Employees - 35 days paid leave for each completed year of service, (5 weeks per annum), to be taken during Rostered Weeks On.
 - b) In respect to Employees engaged as Part-Time Pilot Boat Employees, annual leave will be based on pro rata accrual of 35 days per annum, (5 weeks).
 - c) 50% of 35 days = 17.5 days
- 21.5 The timing of the taking of annual leave will be subject to operational requirements of the Employer. The Employer will not unreasonably refuse an application for annual leave.
- 21.6 By agreement between the Employer and the Employee, annual leave may be taken in more than one (1) portion, however annual leave must be taken in one (1) week blocks to accommodate the Roster. For the purpose of clause twenty (21) reference to one (1) week means 7 calendar days.
- 21.7 Applications for annual leave should be lodged in advance so that operational requirements can be adequately resourced. An annual leave application without sufficient notice and/or a negative impact on the operational requirements of the Employer may not be approved.
- 21.8 The Employer will determine the actual method of granting leave during periods of higher demand i.e., Christmas, public holidays. The Employer will take all reasonable measures to ensure leave is granted in an equitable fashion.
- 21.9 An Employee will be required to take annual leave based on the hours the Employee would have worked had the Employee not proceeded on annual leave.
- 21.10 The Employee is to be paid at the Employee's rate of pay as at the time immediately before the leave period begins. The Employee's remuneration is inclusive of any entitlement to leave loading.
- 21.11 The period of annual leave shall be exclusive of any public holiday falling within the period of annual leave.
- 21.12 Notwithstanding the above, the Employer may direct an Employee to take up to a quarter of their accrued annual leave entitlement where:
- a) the Employee has accrued more than 10 weeks (70 days) of annual leave (excessive annual leave); and
 - b) the Employer and Employee could not reach agreement on the reduction of excessive leave; and

- c) the Employer gives at least one (1) month notice of the requirement.

21.13 By written agreement with the Employer, an Employee may elect to cash out up to 50% of his/her accrued annual leave entitlement provided the Employee has accessed at least two (2) weeks annual leave in the preceding 12 months and the Employee maintains a minimum of four (4) weeks accrued leave.

21.14 At the time of termination of employment, all untaken accrued leave shall be paid out.

22. PURCHASED LEAVE

40/44/48/50 weeks of service

22.1 An Employee may apply for additional leave per year and agree to be paid 40/52, 44/52, 48/52 or 50/52 of their salary, and after working 40/44/48/50 weeks, respectively, take an additional 12/8/4/2 weeks of paid leave for that year.

22.2 Such arrangements are subject to the Employer's approval.

22.3 The additional weeks of leave will normally be taken at the conclusion of 40/44/48/50 weeks of service, except where otherwise agreed between the Employer and the Employee.

22.4 In the case of 48/52 and 50/52 option, where an Employee takes leave in accordance with this clause, the period of absence shall not constitute a break in service and shall count as service for the purposes of this Agreement.

22.5 In the case of 40/52 and 44/52 option, the period of absence does not constitute a break in service but does not count as service for all purposes of this Agreement.

Four (4) out of five (5) years

22.6 An Employee may elect to work for four (4) years at 4/5 normal salary and take the fifth (5th) year as paid leave.

22.7 Such arrangements are subject to approval of the CEO.

22.8 The fifth (5th) year must be taken at the end of the fourth (4th) year of service, unless otherwise agreed by the Employee and the Employer.

22.9 Where an Employee takes leave under this arrangement, the period of leave does not constitute a break in services but does not count as service for all purposes of this Agreement.

22.10 An Employee may withdraw in writing from this arrangement before completing the four (4) year qualifying period, in which case a lump sum payment of salary forgone will be paid to the Employee.

22.11 This arrangement is available only where an Employee has cleared any accrual of annual leave which is greater than two (2) years and has completed their probationary period.

23. PERSONAL LEAVE (Includes Sick Leave & Carer's Leave)

23.1 Employees (other than Casual Employees) are entitled to personal leave in accordance with the NES.

- 23.2 In summary, Employees are entitled to a period of ten (10) days paid personal leave per annum which may be taken as sick or carer's leave. Part-time Employees are entitled to a pro-rata amount, based on their hours of work.
- 23.3 An Employee (other than a Casual Employee) who is unable to attend work during their ordinary hours of work;
- a) on account of personal illness or injury; or
 - b) because the Employee is required to provide care or support to a member of the Employee's Immediate Family or Member of Household who requires care or support as they are sick or injured or has an unexpected emergency;
- shall be entitled to take an amount of accrued paid personal leave subject to the provision of this clause.
- 23.4 An Employee shall as soon as reasonably practicable inform the Employer of the Employee's inability to attend work and the estimated duration of the absence.
- 23.5 To be entitled to paid personal leave for absences in excess of two (2) days an Employee must give the Employer:
- a) if it is reasonably practicable to do so – a medical certificate from a registered health practitioner; or
 - b) if it is not reasonably practicable for the Employee to give the Employer a medical certificate – reasonable evidence.
- 23.6 The number of paid time off days which may be granted without production of a medical certificate shall not exceed, in the aggregate, five (5) working days in any one calendar year.
- 23.7 The Employee is to be paid for any period of paid personal leave at the Employee's rate of pay as at the time immediately before the leave period begins.

Unpaid Carer's Leave

- 23.8 An Employee who is required to provide care or support to a member of the Employee's Immediate Family or Member of Household who requires care or support as they are sick or injured or has an unexpected emergency, and who:
- 23.9 has exhausted their entitlement to paid carer's leave; or
- a) is a Casual Employee;
 - b) shall be entitled to take up to two (2) days unpaid carer's leave for each such occasion.
- 23.10 The entitlement may be taken in a single unbroken period of two (2) days or as two (2) separate periods of one (1) day or as agreed by the Employer and Employee and is subject to the notice and documentation requirements in Clause 23.5 (Personal Leave) being met.
- 23.11 Unpaid carer's leave does not break an Employee's continuity of service but does not otherwise count as service.

24. COMPASSIONATE LEAVE

- 24.1 An Employee (other than a Casual Employee) is entitled to take up to three (3) days compassionate leave when a member of the Employee's immediate family or household:

- a) contracts or develops a personal injury or illness that poses a serious threat to their life; or
- b) dies;
- c) a child is stillborn, where the child would have been a member of the Employee's Immediate Family or Member of Household, if the child had been born alive; or
- d) the Employee or the Employee's spouse or de facto partner have a miscarriage. This subclause does not apply if the miscarriage results in a stillborn child, or to a former spouse or former de facto partner of the Employee.

24.2 The entitlement may be taken in a single unbroken period of three (3) days or as separate periods as agreed by the Employer and Employee.

24.3 The Employee is to be paid for any period of paid compassionate leave at the Employee's rate of pay as at the time immediately before the leave period begins.

24.4 The Employer may require the Employee, as a condition of payment, to provide the Employer with reasonable evidence of the injury, illness or death.

25. PARENTAL LEAVE

25.1 Parental leave is provided for in the NES. This clause supplements or deals with matters incidental to the NES.

25.2 Unpaid parental leave

- a) An eligible Employee, as defined by the Fair Work Act, including an eligible Casual Employee is entitled to a total of 104 weeks of unpaid parental leave.

25.3 Paid parental leave is provided in the Southern Ports Leave Administration Procedure.

- a) Where parental leave is paid it shall be so paid at the flat hourly rate.
- b) After twelve (12) months continuous service with the Employer, an Employee who is the primary care giver of a child, shall be entitled to have the first 12 weeks as paid parental leave.
- c) After 12 months' continuous service, an Employee who is the secondary caregiver of a child leave shall be entitled to have the first two (2) weeks paid as paid parental leave.

26. COMMUNITY SERVICES LEAVE

26.1 Community services leave is provided for in the NES.

27. DOMESTIC VIOLENCE LEAVE

27.1 The Employer recognises that Employees may sometimes face situations of violence or abuse in their personal life that may affect their attendance or performance at work. Therefore, the Employer is committed to providing support to Employees that experience domestic violence.

27.2 All Employees can access ten (10) days per year of paid family domestic violence leave each year. All 10 days of paid family and domestic violence leave are available in full on the Employee's start of work anniversary. This leave does not accrue from year to year.

- 27.3 Paid family and domestic violence leave can be taken if an Employee needs to do something to deal with the impact of family and domestic violence and its not practical for them to do so outside of their work hours. This could include:
- a) attending healthcare, including counselling, therapy or medical appointments;
 - b) attending legal proceedings;
 - c) accessing police or support services;
 - d) making arrangements for their safety or a family member's safety (including relocation); and
 - e) other activities related to domestic violence.
- 27.4 This leave will be in addition to existing leave entitlements and may be taken as consecutive or single days or as a fraction of a day and can be taken without prior approval. Additional leave may be drawn from an Employee's available accrued personal leave balance.
- 27.5 Family domestic violence means violent, threatening or other abusive behaviour by certain individuals known to an Employee that both seeks to coerce or control the Employee and causes them harm or fear.
- 27.6 Proof of domestic violence may be required and can be in the form of an agreed document issued by the Police Service, a Court, a doctor, a Domestic Violence Support Service or lawyer.
- 27.7 The Employer will take all reasonable steps to ensure any information about notice or evidence for family and domestic violence is kept confidential. No information will be kept on an Employee's personal file without their express written permission.
- 27.8 The Company will only use information about notice or evidence to satisfy the Company that the Employee is entitled to family and domestic violence leave, unless the Company uses the information where:
- a) the Employee consents; or
 - b) it's required by law; or
 - c) it's necessary to protect the life, health or safety of the Employee or another person.
- 27.9 No adverse action will be taken against an Employee if their attendance or performance at work suffers as a result of experiencing domestic violence.
- 27.10 The Employer's contact will be a nominated member of the HR department who will have skills and knowledge in managing domestic violence and privacy issues.
- 27.11 An Employee experiencing domestic violence may raise the issue with their immediate supervisor or the nominated human resources representative. The supervisor may seek advice from the nominated human resources representative if the Employee chooses not to make contact with the human resources department.
- 27.12 Where requested by an Employee, the nominated human resources representative will liaise with the Employee's supervisor on the Employee's behalf, and will, in consultation with the Employee, make a recommendation on the most appropriate form of support.
- 27.13 An Employee experiencing domestic violence will be referred (with their consent) to the Employee Assistance Program (EAP) and/or other local resources. The EAP shall include professionals trained specifically in domestic violence.

28. LONG SERVICE LEAVE

- 28.1 Long service leave entitlements are provided for in accordance with the Long Service Leave Act 1958 (WA) with the following improved conditions.
- 28.2 After the commencement of this Agreement, an Employee shall accrue long service leave at a rate of 1.857 weeks per year of service (13 weeks after 7 years) for Full-Time Employees or pro-rata for Part-time Employees.
- 28.3 An Employee may take long service leave after seven (7) years continuous service.
- 28.4 Where an Employee has completed five (5) years' continuous service, they will be entitled to be paid out pro rata long service leave upon cessation of employment unless due to serious misconduct as defined by the Act.
- 28.5 For each subsequent period of seven (7) years' service, an Employee shall be entitled to 13 weeks of long service on full pay.

29. SHORT LEAVE

- 29.1 An Employee may receive up to three (3) days per annum short leave for compassionate, medical, or representative sporting reasons subject to the agreement of the Harbour Master. This leave does not accrue from year to year.

30. LEAVE WITHOUT PAY

- 30.1 At the discretion of the Employer, an Employee may be granted leave without pay (LWOP).
- 30.2 An Employee will only be granted LWOP if the Employee has used all their accrued entitlements to annual, personal, and long service leave.
- 30.3 If an Employee is granted LWOP, any continuous period of LWOP more than ten (10) working days shall not break service however shall not count towards service.
- 30.4 If an Employee is granted LWOP and that leave is over one of the public holidays, the Employee is not entitled to any payment for that day.

31. PUBLIC HOLIDAYS

- 31.1 Public holidays shall be in accordance with the NES. The following days will be observed as public holidays:
- a) New Year's Day
 - b) Australia Day
 - c) Labour Day
 - d) Good Friday
 - e) Easter Sunday
 - f) Easter Monday
 - g) Anzac Day
 - h) Western Australia Day
 - i) Sovereign's Birthday

- j) Christmas Day
- k) Boxing Day.

- 31.2 The parties agree that unless mutually agreed, when one of the days listed above falls on a Saturday or Sunday the holiday shall be observed on the next Monday.
- 31.3 When Boxing Day falls on a Sunday or Monday the public holiday shall be observed on the next succeeding Tuesday. In each case the substituted day shall be a public holiday without deduction of pay. The day for which it is substituted shall not be a public holiday.
- 31.4 Due to the nature of operations, Pilot Boat Employees may be requested to work public holidays, and this has been accounted for in the Employee's Remuneration. Employees working on shift are required to work in accordance with their roster.
- 31.5 Casual Employees are not entitled to payment for absences on public holidays.

PART 7 – CONSULTATION & DISPUTE RESOLUTION

32. CONSULTATION AND CHANGE

Notification of Change

- 32.1 The parties to this Agreement acknowledge the rights and responsibilities of each other in relation to consultation about change.
- 32.2 Specifically, the Employer recognises its responsibility to genuinely consult with Employees, their representatives (where nominated), and the Union, about any change that is it likely to have significant effect on them.
- 32.3 The Employer will give genuine consideration to the views and advice of the Employees, their representatives (where nominated), and the Union. Accordingly;
- a) Where the Employer is likely to introduce change(s) that are likely to have significant effect on Employees or proposes to introduce a change to the regular roster or ordinary hours of work of Employees, the Employer undertakes to notify the Employees who may be affected by the proposed change(s), and the Union.
- 32.4 Without limiting the generality thereof, significant effect includes;
- a) termination of employment
 - b) changes to the composition, operation, or size of the workforce;
 - c) major changes in the skills required of Employees
 - d) the elimination or diminution of job opportunities, promotion opportunities or job tenure
 - e) the alteration of hours of work
 - f) the need for retraining or transfer of Employees to other work or locations;
 - g) the restructuring of jobs
 - h) the use of contractors;
 - i) change(s) to the legal or operational structure of the business; or
 - j) structural changes to the Employer's operations.

Company Duty to Discuss Change

- 32.5 The Employer undertakes to discuss with the affected Employees, the introduction of the proposed change(s), the effects the changes are likely to have on Employees, measures to avert or mitigate any adverse effects of such changes on Employees and give prompt consideration to matters raised by the Employees, their representatives (where nominated), and the Union in relation to the proposed change(s).
- 32.6 The parties to this Agreement agree to participate in these discussions in good faith.
- 32.7 The discussions shall commence as early as practicable after the Employer has determined that it is likely to implement the proposed change(s).

32.8 For the purposes of such discussion, the Employer undertakes to provide in writing to the Employees concerned, their representatives (where nominated) and the Union, all appropriate relevant information about the proposed change(s) including the nature of the proposed change(s), the expected effects of the changes on Employees and any other matters likely to affect Employees.

Implementation of Change

32.9 It is agreed that, after the Employer has given careful and genuine consideration to the views of Employees and provided consultation has occurred in accordance with this clause between the Employer and relevant Employees in relation to the implementation of the proposed change(s); the proposed change(s) may be implemented with seven (7) days' notice.

32.10 Where there is a disagreement over:

- a) the application of this clause;
- b) the implementation of the change(s) which have been the subject of consultation under this clause; and/or
- c) the actual subject of the proposed change

the matter may be placed into dispute pursuant to the Dispute Resolution Procedure of this Agreement.

32.11 Whilst a matter is being progressed according to this clause and subject to there being no stoppage of work as a result of a matter raised under this clause, the status quo will remain.

32.12 The status quo will be the state of affairs that existed prior to the matter that has been put in dispute.

33. CHANGES TO REGULAR ROSTER OR ORDINARY HOURS OF WORK

33.1 Where the Employer proposes to introduce a change to the regular roster or ordinary hours of work of Employees, the following applies:

- a) the Employer must notify the relevant Employee(s) of the proposed change; and
- b) sub-Clauses 33.2 to 33.8 to apply.

33.2 The relevant Employees may appoint a representative for the purposes of the procedures in this term.

33.3 If:

- a) a relevant Employee appoints, or relevant Employees appoint, a representative for the purposes of consultation; and
- b) the Employee or Employees advise the Employer of the identity of the representative;
- c) the Employer must recognise the representative.

33.4 As soon as practicable after proposing to introduce the change, the Employer must:

- a) discuss with the relevant Employee/s the introduction of the change; and
- b) for the purposes of the discussion--provide to the relevant Employee/s:
 - (i) all relevant information about the change, including the nature of the change; and
 - (ii) information about what the Employer reasonably believes will be the effects of the

change on the Employee/s; and

(iii) information about any other matters that the Employer reasonably believes are likely to affect the Employees; and

(iv) invite the relevant Employee/s to give their views about the impact of the change (including any impact in relation to their family or caring responsibilities).

33.5 However, the Employer is not required to disclose confidential or commercially sensitive information to the relevant Employee/s.

33.6 The Employer must give prompt and genuine consideration to matters raised about the change by the relevant Employee/s.

33.7 For the purposes of applying this clause “relevant Employee/s” means the Employee/s who may be affected by the proposed change to regular roster or ordinary hours.

33.8 Following the consultation process outlined above; in the event that the Employer then makes a decision to implement the changes which have been the subject of consultation, the Employer may only do so in accordance with Clauses 32.9 to 32.12, Implementation of Change.

34. DISPUTE RESOLUTION

34.1 If a dispute relates to:

- a) a matter arising under this Agreement;
- b) the National Employment Standards; or
- c) any matter pertaining to the relationship between the Employer and the Employees.

this term sets out the procedures to settle the dispute provided that nothing in this term prevents a party to a dispute from applying to a court for orders in relation to a contravention or proposed contravention of a civil remedy provision.

34.2 An Employee is entitled to a representative of their choice for the purposes of the procedures in this term.

34.3 The Union may raise a dispute in a representative capacity for an Employee or Employees.

34.4 Where the Union raises a dispute in a representative capacity, the Union is not required to identify or provide evidence of Employee(s) on behalf of whom the dispute is raised (other than where circumstances are such that the Employer cannot properly understand the dispute unless the Employee(s) are identified).

34.5 In the first instance, the parties to the dispute will try to resolve the dispute at the workplace level.

34.6 If discussions at the workplace level do not resolve the dispute, a party to the dispute may refer the matter to Fair Work Commission.

34.7 The Fair Work Commission will deal with the dispute by conciliation and/or arbitration. The Fair Work Commission may otherwise deal with the dispute as it sees fit, including by the exercise of any of its powers or functions under the Act.

- 34.8 A decision made by the Fair Work Commission is subject to an appeal against the decision of a single member of the Fair Work Commission to the Full Bench of the Fair Work Commission under and in accordance with s 604 of the Act and not this term.
- 34.9 To the extent possible, the parties to a dispute intend that a decision of the Fair Work Commission under this term will be subject to judicial review and that the Full Bench deal with any appeal under this term in accordance with its statutory function in s 604, exercising only powers and functions conferred on it by the Act, and not in its capacity as a private arbitrator.
- 34.10 It is a condition of validity that any decision of the Fair Work Commission under this term is legally correct. A decision that is not legally correct may be appealed to the Federal Court of Australia on that ground.
- 34.11 While the parties are trying to resolve the dispute using the procedures in this term:
- a) the parties will maintain the status quo existing immediately prior to the subject matter of the dispute arising, unless an Employee has a reasonable concern about an imminent risk to their health or safety; however
 - b) the Employer may direct an Employee to perform other available work, on the same terms and conditions of Employment, if it is reasonable to do so to protect the health, safety or welfare of Employees.
 - c) For the avoidance of doubt, the status quo is defined as 'the action giving rise to the dispute being withdrawn, and the situation immediately prior to the action giving rise to the dispute applying until the dispute is settled'.
- 34.12 An Employee who raises a dispute under this clause is entitled to participate in the procedure provided for in this clause without loss of pay.
- a) Employees who are directly involved in the preparation of a case for conciliation or arbitration, or who are required as a witness in an arbitration, are entitled to do so without loss of pay.
 - b) In the event that the parties to the dispute fail to agree on the identity or number of persons who qualify under this term, the question will be determined by the Fair Work Commission as part of the dispute.

PART 6 – TERMINATION & REDUNDANCY

35. PROBATION

- 35.1 New Employees are employed subject to a six (6) month probationary period.
- 35.2 During the probationary period, the Employee's performance and conduct will be assessed to ascertain the Employee's suitability for permanent appointment to the role.
- 35.3 At the end of the probationary period, the Employer may:
- a) confirm the Employee's ongoing employment with the Employer; or
 - b) terminate the Employee's employment.

36. NOTICE OF TERMINATION

- 36.1 The notice of termination period for Full-Time and Part-Time permanent Employees, by either the Employer or Employee, shall be:

Years of Service	Required Notice
Not more than 1 year	1 week
More than 1 year but not more than 3 years	2 weeks
More than 3 years but not more than 5 years	3 weeks
More than 5 years	4 weeks

- 36.2 If an Employee is 45 years or older and has completed at least two (2) years continuous service with the Employer, the Employee will receive one (1) additional weeks' notice.
- 36.3 At its sole discretion, the Employer may bring employment to an end by making a payment in lieu of all or part of the notice.
- 36.4 In the event that an Employee does not provide or complete the required notice, the Employer reserves the right to withhold payment of outstanding wages up to the value of the balance of notice not worked.

Summary Dismissal

- 36.5 An Employee's employment may be terminated immediately and without notice by the Employer for any conduct which would justify summary dismissal. This includes but is not limited to any serious case of neglect of duty or serious and/or wilful misconduct. In such circumstances payment of wages shall be up to the time of the dismissal only.

Job Search Entitlement

- 36.6 An Employee shall be allowed up to one (1) days' time off without loss of pay for the purpose of seeking other employment.
- 36.7 The time off under Clause 36.6 is to be taken at a time convenient to the Employee after consultation with the Employer.

37. REDUNDANCY

- 37.1 An Employee whose employment is terminated by reason of Redundancy is entitled to the following amount of severance pay in respect of a period of continuous service:
- a) Four (4) weeks' pay at the base rate for each year of completed service. This will be capped at 40 weeks.
- 37.2 An Employee given notice of termination in circumstances of redundancy may terminate his/her employment during the period of notice set out in Clause 36 - Notice of Termination. In this circumstance the Employee will be entitled to receive the benefits and payments they would have received under this clause had they remained with the Employer until the expiry of the notice but will not be entitled to payment in lieu of notice.

Job Search Entitlement

- 37.3 An Employee shall be allowed up to one (1) days' time off without loss of pay during each week of notice for the purpose of seeking other employment.
- 37.4 If the Employee has been allowed paid leave for more than one (1) day during the notice period for the purpose of seeking other employment, the Employee shall, at the request of the Employer, be required to produce proof of attendance at an interview or he/she shall not receive payment for the time absent. For this purpose, a statutory declaration will be sufficient.
- 37.5 This entitlement applies instead of Clause 36.6.

PART 5 – OTHER MATTERS

38. EMERGENCIES

- 38.1 An Employee must attend the Port in an emergency if reasonably instructed to do so by the Employer, whether or not that Employee is rostered on.
- 38.2 Where an Employee, other than a Casual Employee, is required to attend for work with less than two (2) hours' notice, they will be paid the relevant Day Rate in the Salary Table at 14.5 of this Agreement in addition to their salary/guarantee.

39. CONTINUITY OF SERVICE DELIVERY

The Parties recognise and accept the requirement of the Employer to guarantee delivery of services to its customers. Accordingly, the Employees will not engage in unlawful industrial action which is a condition of employment for Employees.

40. USE OF CONTRACTORS AND LABOUR HIRE

- 40.1 The Employer will use direct employment as the preferred and predominant employment option within the organisation.
- 40.2 The Employer will not engage a contractor to supply personnel to fill any of the classifications covered by this Agreement with the intent of pursuing a reduction in wages and conditions of Employees or to erode permanency of employment.
- 40.3 The Employer shall only engage contractors/labour hire providers who apply wages and conditions to their employees that are no less favourable than provided for under the terms of this Agreement*, where the employees of those contractors/labour hire providers are performing work covered by this Agreement which would ordinarily be undertaken by the Employees.
- *For the avoidance of doubt, the relevant test of whether this requirement has been met will be a comparison with the terms applicable to a Casual Employee performing the same work.
- 40.4 The Employer may need to supplement their directly employed workforce with contract/labour hire employees from time to time in circumstances including:
- a) where specialist skills are required or where there is a need to work on specialised plant or equipment;
 - b) where there are non-core skills and or work to be performed;
 - c) for genuine 'project' work;
 - d) in extraordinary and unforeseen circumstances;
 - e) when the use of contract labour would be considered a community or philanthropic service (by mutual agreement via consultation).
- 40.5 In such circumstances, the provisions of sub-Clause 40.3 shall not be deemed to apply.
- 40.6 In the event of a dispute arising in relation to the application of this clause, the matter may be progressed in accordance with the Dispute Resolution provisions within this Agreement.

- 40.7 No Employee shall be made redundant whilst labour hire employees, contractors and/or employees of contractors engaged by the Employer, are performing work that is or has been performed by the Employees.

41. HEALTHY LIFESTYLE PROGRAMME

- 41.1 The Employer's Healthy Lifestyle Programme procedure provides the opportunity to promote and participate in fitness, health and wellbeing. An Employee may elect to utilise the subsidy towards the cost of private health insurance. All Employees can apply for subsidy under the programme details of which are provided in the procedure.
- a) The Employer will reimburse the costs, up to a maximum reimbursement amount of \$299 including GST per annum
 - b) Reimbursement will be made upon production of a receipt, through the Employer's expenses claim process.

42. FITNESS FOR WORK

- 42.1 Employees are required to comply with the Employer's procedures related to fitness for work as at the date of the implementation of this Agreement and with any operational requirements related to fitness for work.
- 42.2 All Employees are required to perform all work in accordance with safety standards, legislation, codes, regulations, including those set out in any of the Employer's policies and procedures.
- 42.3 Fitness for work includes physical, psychological and social factors. Impairment of fitness for work can be due to a range of factors, including, but not limited to;
- a) medical conditions including stress;
 - b) alcohol, drugs; and
 - c) fatigue.
- 42.4 Employees must ensure that they take all reasonable care not to expose themselves or others to unnecessary health or safety risks.
- 42.5 A fatigue risk assessment must be completed when:
- a) Total hours of work exceed in a single shift; and / or
 - b) (Work in excess of hours is voluntary, no Employee will be required to volunteer for a shift exceeding hours)
 - c) Total hours of work over a 4-week period will exceed an average of 56 per week; and
- 42.6 It is the Employee's responsibility to ensure they are fit, ready, willing and able to work at the start of the shift and throughout the work period.
- 42.7 An Employee must notify their supervisor at the start of the shift if the Employee is taking medication which could reasonably be expected to cause impairment. It is the responsibility of the Employee to check effects of medication.
- 42.8 If an Employee has any concerns regarding their fitness for work or the fitness for work of another person, the Employee must notify their supervisor immediately.

- 42.9 The Employer is committed to providing safe systems of work and eliminating hazards in the workplace. This includes taking reasonable precautions to ensure all Employees are in a fit state to work so as to minimise the risk of injury to Employees and others.
- 42.10 All Employees may be subject to undertake random, blanket or “for cause” alcohol and drug testing in accordance with the related procedure, as and when required by the Employer.
- 42.11 A positive result to alcohol and drug tests, may result in disciplinary action, up to and including termination of employment.
- 42.12 If an Employee sustains an injury or illness at work, the Employee must report the incident as soon as reasonable to their Supervisor.

43. TRAINING AND QUALIFICATIONS

Qualifications

- 43.1 An Employee may be required as a condition of their employment to hold qualifications and licenses. An Employee must inform the Employer immediately if that license or qualification is suspended or cancelled.
- 43.2 If an inherent requirement of the Employee’s position is to hold a qualification or license, a loss of that qualification or license may result in termination of employment. Employees will be provided a reasonable opportunity to re-attain prior to any possible termination
- 43.3 The Employer will pay costs for renewal of any licenses (not including motor vehicle licenses) required for the position as determined by the Employer.
- 43.4 Employees will use the Employers vehicles and equipment with due care for the purpose for which they are intended and hold appropriate licenses, tickets and qualifications to operate such vehicles and equipment.

Training

- 43.5 Any additional training that the Employer determines that Employees are required to undertake will be provided by the Employer.
- 43.6 Employees, who are required by the Employer to attend training, shall be paid the Employees applicable Rate of Pay as set out in clause 14.5 all hours the Employee attends training.

44. STUDY LEAVE

- 44.1 Study leave may apply as per the Employers policy which may be varied from time to time.

45. RECOVERY OF MONIES/OVERPAYMENT

- 45.1 The Employee is liable to repay to the Employer any money paid to the Employee by the Employer to which the Employee was not entitled ('an overpayment').
- 45.2 If an Employee owes the Employer money on termination, the Employer may recover this from any unpaid wages owing to the Employee. The Employer is authorised to make any deductions for the purposes of this clause upon issuing written advice to the Employee of the amounts they owe.

46. RETURN OF PROPERTY

- 46.1 Upon termination of employment for any reason, an Employee must return immediately all property belonging to the Employer.

47. INCOME PROTECTION

- 47.1 Employees shall be entitled to the benefits of an income protection insurance scheme taken out and paid for by the Employer.

48. TRAVEL

- 48.1 The Employer will reimburse all reasonable expenses of the Employee who travels on approved official Port business including and not limited to, travel, accommodation, meals and incidental expenses. To be in accordance with the Employer's Travel Policy which may vary from time to time.

49. PROTECTIVE CLOTHING AND EQUIPMENT

- 49.1 Employees are required to wear and or comply with any specialist personal protective equipment (PPE) requirements.
- 49.2 The Employer will provide PPE in accordance with the Employer's policy, as amended from time to time.
- 49.3 Clothes will be replaced on a fair wear and tear basis.

50. WORKPLACE REPRESENTATIVE

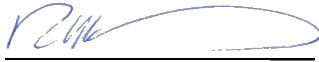
- 50.1 The Employer will recognise the duly elected Union delegates as Workplace Representatives.
- 50.2 The delegates shall have access to reasonable facilities to assist in the carrying out of their duties. These may include phone, notice boards, internal mail, e-mail and internet provided such use does not contravene the Employer's policy.
- 50.3 The Employer and the Union agree to a maximum of one (1) site delegate.
- a) Delegates' duties include but are not limited to:
 - b) representing the Union and its Members in workplace relations matters at work;
 - c) giving the Union's representatives instructions and information during a dispute, including during preparations and attendances in tribunals and courts; and
 - d) keeping Union members informed of workplace relations matters and providing advice;
 - e) Each financial year the Delegate will be allowed up to two (2) days paid leave to attend Union approved training and/or conferences.
- 50.4 Costs associated with attending such training will be the responsibility of the Union. This includes course attendance, travel, accommodation and meals.
- 50.5 Attendance at courses and conferences need to be directly relevant to increasing the skills and/or knowledge of the workplace representative's role and its benefits in the workplace.

- 50.6 The Union and the Employee must provide the Employer with at least four (4) weeks' notice of the request for such leave, and the names of delegates that will be attending. Subject to approval by the Employer, such requests will not be unreasonably refused.
- 50.7 Where such training requires more than the agreed time the Employee may apply to utilise alternative leave entitlements.

51. SIGNATURES

Employer

Signed for and on behalf of Southern Ports Authority (ABN 30 044 341 250)



Signature on behalf of
the Employer

Keith Wilks

Name of person authorised
to sign

Date: 18 / 12 / 2024

Chief Executive Officer

Position

Level 4, 679 Murray Street, West Perth, WA

6005

Address

Post Code

For Employees

Signed on behalf of the Employees covered by this agreement



Signature of
Employee Representative

Paddy Crumlin

Name of Employee

Date: 23 / 12 / 2024

National Secretary, Maritime Union of Australia

Authority to Sign (Position Title)

Level 2, 365 Sussex Street Sydney

2000

Address

Post Code

Part 7—Workplace Delegates, Consultation and Dispute Resolution

[Part 7—Consultation and Dispute Resolution renamed by [PR774763](#) from 01Jul24]

25A. Workplace delegates' rights

[25A inserted by [PR774763](#) from 01Jul24]

25A.1 Clause 25A provides for the exercise of the rights of workplace delegates set out in section 350C of the [Act](#).

NOTE: Under section 350C(4) of the [Act](#), the employer is taken to have afforded a workplace delegate the rights mentioned in section 350C(3) if the employer has complied with clause 25A.

25A.2 In clause 25A:

- (a) **employer** means the employer of the workplace delegate;
- (b) **delegate's organisation** means the employee organisation in accordance with the rules of which the workplace delegate was appointed or elected; and
- (c) **eligible employees** means members and persons eligible to be members of the delegate's organisation who are employed by the employer in the enterprise.

25A.3 Before exercising entitlements under clause 25A, a workplace delegate must give the employer written notice of their appointment or election as a workplace delegate. If requested, the workplace delegate must provide the employer with evidence that would satisfy a reasonable person of their appointment or election.

25A.4 An employee who ceases to be a workplace delegate must give written notice to the employer within 14 days.

25A.5 Right of representation

A workplace delegate may represent the industrial interests of eligible employees who wish to be represented by the workplace delegate in matters including:

- (a) consultation about major workplace change;
- (b) consultation about changes to rosters or hours of work;
- (c) resolution of disputes;
- (d) disciplinary processes;
- (e) enterprise bargaining where the workplace delegate has been appointed as a bargaining representative under section 176 of the [Act](#) or is assisting the delegate's organisation with enterprise bargaining; and
- (f) any process or procedure within an award, enterprise agreement or policy of the employer under which eligible employees are entitled to be represented and which concerns their industrial interests.

25A.6 Entitlement to reasonable communication

- (a) A workplace delegate may communicate with eligible employees for the purpose of representing their industrial interests under clause 25A.5. This includes discussing membership of the delegate's organisation and representation with eligible employees.
- (b) A workplace delegate may communicate with eligible employees during working hours or work breaks, or before or after work.

25A.7 Entitlement to reasonable access to the workplace and workplace facilities

- (a) The employer must provide a workplace delegate with access to or use of the following workplace facilities:
 - (i) a room or area to hold discussions that is fit for purpose, private and accessible by the workplace delegate and eligible employees;
 - (ii) a physical or electronic noticeboard;
 - (iii) electronic means of communication ordinarily used in the workplace by the employer to communicate with eligible employees and by eligible employees to communicate with each other, including access to Wi-Fi;
 - (iv) a lockable filing cabinet or other secure document storage area; and
 - (v) office facilities and equipment including printers, scanners and photocopiers.
- (b) The employer is not required to provide access to or use of a workplace facility under clause 25A.7(a) if:
 - (i) the workplace does not have the facility;
 - (ii) due to operational requirements, it is impractical to provide access to or use of the facility at the time or in the manner it is sought; or
 - (iii) the employer does not have access to the facility at the enterprise and is unable to obtain access after taking reasonable steps.

25A.8 Entitlement to reasonable access to training

Unless the employer is a small business employer, the employer must provide a workplace delegate with access to up to 5 days of paid time during normal working hours for initial training and at least one day each subsequent year, to attend training related to representation of the industrial interests of eligible employees, subject to the following conditions:

- (a) In each year commencing 1 July, the employer is not required to provide access to paid time for training to more than one workplace delegate per 50 eligible employees.
- (b) The number of eligible employees will be determined on the day a delegate requests paid time to attend training, as the number of eligible employees who are:
 - (i) full-time or part-time employees; or
 - (ii) regular casual employees.
- (c) Payment for a day of paid time during normal working hours is payment of the amount the workplace delegate would have been paid for the hours the workplace delegate would have been rostered or required to work on that day if the delegate had not been absent from work to attend the training.
- (d) The workplace delegate must give the employer not less than 5 weeks' notice (unless the employer and delegate agree to a shorter period of notice) of the dates, subject matter, the daily start and finish times of the training, and the name of the training provider.
- (e) If requested by the employer, the workplace delegate must provide the employer with an outline of the training content.
- (f) The employer must advise the workplace delegate not less than 2 weeks from the day on which the training is scheduled to commence, whether the workplace delegate's access to paid time during normal working hours to attend the training has been approved. Such approval must not be unreasonably withheld.
- (g) The workplace delegate must, within 7 days after the day on which the training ends, provide the employer with evidence that would satisfy a reasonable person of their attendance at the training.

25A.9 Exercise of entitlements under clause 25A

- (a) A workplace delegate's entitlements under clause 25A are subject to the conditions that the workplace delegate must, when exercising those entitlements:
 - (i) comply with their duties and obligations as an employee;
 - (ii) comply with the reasonable policies and procedures of the employer, including reasonable codes of conduct and requirements in relation to occupational health and safety and acceptable use of ICT resources;
 - (iii) not hinder, obstruct or prevent the normal performance of work; and

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- (iv) not hinder, obstruct or prevent eligible employees exercising their rights to freedom of association.
- (b) Clause 25A does not require the employer to provide a workplace delegate with access to electronic means of communication in a way that provides individual contact details for eligible employees.
- (c) Clause 25A does not require an eligible employee to be represented by a workplace delegate without the employee's agreement.

NOTE: Under section 350A of the [Act](#), the employer must not:

- (a) unreasonably fail or refuse to deal with a workplace delegate; or
- (b) knowingly or recklessly make a false or misleading representation to a workplace delegate; or
- (c) unreasonably hinder, obstruct or prevent the exercise of the rights of a workplace delegate under the [Act](#) or clause 25A.